

## Introduction for Parenting Time Investigations

As with custody, MCL 505(1)(d) sets forth the friend of the court's responsibility to investigate parenting time: "To investigate all relevant facts, and to make a written report and recommendation to the parties and to the court regarding child custody or parenting time, or both, if there is a dispute as to child custody or parenting time, or both, and domestic relations mediation is refused by either party or is unsuccessful, or if ordered to do so by the court." Thus, the statute provides for the friend of the court to complete two types of parenting time investigations: Parenting time can be investigated and analyzed at the same time custody is addressed, or parenting time can be addressed as a part of a separate proceeding.

When a dispute exists concerning the custody of a child, the court may provide for reasonable parenting time of the child by the parties, by the grandparents, or by others.<sup>1</sup> The law requires that the parenting time factors set forth in MCL 722.27(a) be addressed, as well as the best interests factors set forth in MCL 722.23.<sup>2</sup> This means the investigator will have to address the 12 factors of the Child Custody Act for parenting time investigations (even if instructed to do a parenting time investigation only). The objective of the analysis is to insure:

*"..... parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time."<sup>3</sup>*

The investigator will need to follow many of the same procedures required for a custody investigation when required to complete a parenting time investigation. This includes:

- ▶ Send out contact letters and questionnaires. The contact letters should indicate the date and time the parties are to appear for their appointment with the investigator.
- ▶ Review the pleadings and questionnaires.
- ▶ Check for Domestic Violence (if there are indications of domestic violence the investigator should refer to office policy on screening domestic violence cases and take the appropriate steps).

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<sup>1</sup> MCL 722.27(1).

<sup>2</sup> *Terry v Affum*, 237 Mich App 522 (1999) (it is error not to evaluate parenting time without examining child custody factors); *Stevens v Stevens*, 86 Mich App 258 (1978).

<sup>3</sup> MCL 722.27a(1).

- ▶ Identify and concentrate on those issues that are in dispute and spend less time on those where it appears there is agreement.
- ▶ Address the 12 best interest factors of the Child Custody Act, MCL 722.23.
- ▶ Interview the child or children.
- ▶ Secure signed release forms from both parents (see Appendix 3 for samples of release forms).
- ▶ Gather information for the investigation (see Tab E for Gathering Information Recommendations).
- ▶ Write and proofread the report ( see Tab F for Additional Recommendations).

Generally, parenting time must be granted unless the court finds, by clear and convincing evidence, that it would endanger the child's physical, mental, or emotional health.<sup>4</sup> Thus, a court erred when it changed parenting time based on the fact that blood tests determined the legal father was not the biological father of the child.<sup>5</sup> However, a court did not abuse its discretion in denying a father all parenting time rights when the father had abandoned the child for eight years, the father had only requested parenting time in response to an attempt to collect delinquent support, and the proposed parenting time would change the child's established custodial environment.<sup>6</sup>

**NOTES:** At the time this manual was published, very few appellate cases had addressed the parenting time factors. Because of this, explanation of some factors or legal considerations drawn from appellate decisions will be limited.

In the *Troxel v Granville*,<sup>7</sup> the United States Supreme Court ruled that a Washington statute that permitted grandparents to seek visitation violates a parent's right to make decisions regarding the child's care, custody, and control. Relying on this decision, the Michigan Court of Appeals found that the Michigan grandparenting time statute was unconstitutional.<sup>8</sup> Because of

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<sup>4</sup> MCL 722.27a(3). *Rozek v Rozek*, 203 Mich App 193 (1993) (noting that there are a multitude of terms and conditions that can be attached to parenting time to best serve the interests of, and protect, a child).

<sup>5</sup> *Hawkins v Murphy*, 222 Mich App 664 (1997).

<sup>6</sup> *Stevenson v Stevenson*, 74 Mich App 656 (1977).

<sup>7</sup> *Troxel v Granville*, 530 US 57 (2000); 120 S Ct 2054; 147 L Ed 2d 49 (2000).

<sup>8</sup> *Derosé v Derosé*, 249 Mich App 388 (2002).

these decisions, the Investigators Manual will not address grandparenting investigations. In the event the Supreme Court revisits grand parenting time, the manual will be updated.

The following section of the Investigators Manual will review the nine parenting time factors of the Child Custody Act.<sup>9</sup> The term “parent” will be used to refer to the parent seeking parenting time in the “considerations” and “practice tips” sections following the factors.

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<sup>9</sup> Contained in MCL 722.27a(6).